

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **September 10, 2002**

AGENDA ITEM NO.: **26**

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Memorandum of Understanding Between Lynchburg Baseball Corp. and the City of Lynchburg**

RECOMMENDATION: Approve a Memorandum of Understanding between Lynchburg Baseball Corp., and the City of Lynchburg.

SUMMARY: A Memorandum of Understanding (MOU) has been developed based on discussion and negotiation between representatives of LBC and City staff regarding the Baseball Stadium. The MOU is based on the guiding principle that *all* revenues generated at the City's Baseball Stadium will be used to support the operations of LBC, operations and maintenance of the Stadium, a capital reserve and debt service in excess of the City's initial investment of \$3,384,302.

The attached Memorandum of Understanding includes the following key elements:

1. All revenues include revenues generated by LBC, City events, events held at the Baseball Stadium by a promoter, and funds generated through fundraising activities, donations and naming rights. These revenues include funds received for admission, skyboxes, advertising, all concessions including beer and wine sales, special events, rental fees, and merchandise.
2. An understanding that the City of Lynchburg is not interested in managing or operating a baseball club.
3. Creation of a Baseball Stadium Fund.
4. Formation of an Advisory Committee whose purpose will be to determine the most cost-efficient methods to operate and maintain the Baseball Stadium and to maximize marketing opportunities to achieve the greatest return on investment.
5. Revenue sharing following the paydown of the debt issued above the City's original funding commitment.
6. Agreement by LBC to pay to the City 50% of the sale of net liquidation proceeds up to \$1,750,000 in the event that LBC cannot field a team to play in the City's Baseball Stadium.
7. The term of the Memorandum of Understanding shall be coterminous with the maturity of the debt issued for the Baseball Stadium renovation project.
8. Payment to LBC in the amount of \$30,000 annually from the Baseball Stadium Fund if revenues generated by baseball activities exceed expenditures for baseball operations not including debt service.
9. The City shall not at any time subsidize the operations of LBC.

The MOU will serve as a basis for a more detailed agreement regarding the maintenance and operations of the Baseball Stadium. The detailed agreement will be brought to City Council for consideration at a later date.

PRIOR ACTION(S): Appropriation of funding in the FY 2002 and FY 2003 Capital Improvement Program Budget

BUDGET IMPACT: Creation of a Baseball Stadium Fund to include all costs associated with the operations and maintenance of the Baseball Stadium, a capital reserve to be determined, and debt service costs funded with all sources of revenue generated at the Baseball Stadium.

CONTACT(S): L. Kimball Payne, City Manager, 847.1443, Ext. 223
Bonnie Svrcek, Deputy City Manager, 847.1443, Ext. 224

ATTACHMENT(S): Memorandum of Understanding Between the Lynchburg Baseball Corp., and the City Council of Lynchburg, Virginia (Exhibit A on file in the City Engineer's Office)

A RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING
BETWEEN THE LYNCHBURG BASEBALL CORP. AND THE CITY COUNCIL.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that the
Memorandum of Understanding between the Lynchburg Baseball Corp., and the City of
Lynchburg is hereby approved.

Adopted:

Certified: _____
Clerk of Council

184L

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
LYNCHBURG BASEBALL CORP.
AND THE
CITY COUNCIL
OF
LYNCHBURG, VIRGINIA
(dated 9/05/02)**

This Binding Memorandum of Understanding (MOU) between the Lynchburg Baseball Corp. (LBC) and the City of Lynchburg (City) is entered into September 10, 2002. This MOU serves as the basis for the development of a more detailed agreement regarding the maintenance and operations of the Baseball Stadium.

ARTICLE I-GUIDING PRINCIPLE

This MOU is premised on the principle that all revenues generated at the City's Baseball Stadium will be used to support the operations of LBC, operations and maintenance of the Stadium, a capital reserve, and debt service in excess of the City's initial investment for Baseball Stadium renovations. All revenues include revenues generated by LBC, City events, events held at the Baseball Stadium by a promoter, and funds generated through fundraising activities, donations and naming rights. Further, it is understood that the City is not interested in managing or operating a baseball club.

ARTICLE II-STADIUM DESCRIPTION

The Stadium provided for the use of LBC shall be renovated in substantial accord with the plans and specifications attached hereto or listed as Exhibit A, which plans and specifications may be modified and supplemented by the City from time to time, and shall in all respects provide a high quality professional playing field for the use of LBC and have a seating capacity of approximately 3,500 individuals, a scoreboard, public address system, and shall in all respects comply with Minor League Standards, and with the Americans with Disabilities Act and all fire code, building, health department and other applicable statutes, ordinances, rules and regulations. The City expressly reserves the right to expand the seating capacity of the stadium and the City shall undertake such expansion on dates outside the Baseball Season or, if necessary, during the Baseball Season, in a manner that (i) is minimally disruptive to LBC, and (ii) does not diminish the minimum seating capacity of the Stadium. The City expressly reserves the right to reconfigure Stadium seating with non-permanent seating for City Events.

ARTICLE III-ADVISORY COMMITTEE

An Advisory Committee shall be formed and a Charter outlining the duties of the Advisory Committee shall be adopted. The purpose of the Advisory Committee will be to work together to determine the most cost-efficient methods to operate and maintain the Baseball Stadium as described in the site plan and to maximize marketing opportunities to achieve the greatest return on investment. The Advisory Committee shall consist of a representative appointed by the City Manager, the Financial Services Director, the Director of Parks and Recreation, the Director of Buildings and Grounds, and four

representatives of LBC, one of which shall be the General Manager. A primary responsibility of the Advisory Committee will be to review the budget prepared by LBC for its annual operations and the budget prepared by the City for the operations and maintenance of the Baseball Stadium, a capital reserve, and debt service and to forward the same to LBC and the City Manager. The City Manager will forward his recommendations regarding the budget to the City Council for consideration during its annual budget process.

ARTICLE IV-BASEBALL STADIUM FUND

A “Baseball Stadium Fund” (the Fund) will be created by the City to account for all revenues and expenditures at the Baseball Stadium.

All revenues generated by LBC, City events and events held at the Baseball Stadium by a promoter and funds generated through fundraising activities, donations and naming rights will be deposited into the Fund. These revenues include funds received for admission, skyboxes, advertising, all concessions including beer and wine sales, special events, rental fees, merchandise, and any and all other revenue generated at the Baseball Stadium by LBC, the City or a promoter.

All expenditures attributed to the operations of LBC, operations and maintenance of the Stadium, a capital reserve, and debt service above the City’s initial commitment of \$3,384,302 shall be accounted for in the Fund.

Funds that have been raised through fundraising activities, donations and naming rights shall serve as the beginning balance for the Fund.

LBC and the City shall annually submit a Baseball Stadium budget to the Advisory Committee for review and shall adhere to the City’s annual budget calendar. The Advisory Committee, with the approval of the City Manager, shall manage the Fund and adjust revenues and expenditures within the Fund as warranted during the fiscal year. The Advisory Committee shall forward a Fund budget to the City Manager for consideration in the City’s annual budget.

Following adoption of the Stadium Fund budget by the City Council, the City shall disburse payments to LBC for its operations. A schedule of disbursements shall be determined.

Quarterly reports on the Fund shall be performed and submitted to LBC and the City’s Finance Committee for review.

An annual audit of the Fund shall be performed by the City’s external auditors. The expense for the annual audit shall be included in Baseball Stadium Fund. If the annual audit reveals that revenues exceed expenditures, excess revenues shall be shared by LBC and the City with an additional allocation to a capital reserve fund following the paydown of the debt issued above the City’s original commitment.

In addition to payments to cover operations costs, the City agrees to pay \$30,000 to LBC annually from the Fund for uses determined by LBC if revenues generated by

baseball activities exceed expenditures for baseball operations not including debt service or capital reserve allocations.

The City shall not at any time subsidize the operations of LBC.

ARTICLE V-NON-RELOCATION PROVISION

LBC shall be committed to retaining a Carolina League team to play at the Baseball Stadium in the City. In the event that LBC fails for more than one (1) year to field a team for the enjoyment of the Lynchburg community, it shall liquidate its assets and pay to the City 50% of the sale of net liquidation proceeds up to \$1,750,000. The amount of liquidation proceeds will decrease in the annual amount of excess revenues over expenditures (profits) for LBC operations only after the difference between the City's initial commitment of \$3,384,302 and the total project cost minus maximum liquidation proceeds (\$1,750,000) is reimbursed to the City. For example only:

Total Project Estimate	\$7,000,000
Initial City Commitment	<u>(3,384,302)</u>
Balance	3,615,698
Liquidation Proceeds	<u>(1,750,000)</u>
Balance	\$1,865,698

The City's maximum share of liquidation proceeds of \$1,750,000 would begin to diminish after the City is paid \$1,865,698 from profits from stadium operations.

If LBC loses its Major League Player Development Contract, or is unable to generate revenues sufficient to support the operations of a professional baseball club, the City or LBC may terminate this MOU and any other agreement between LBC and the City free of the foregoing obligation.

ARTICLE VI-ADDITIONAL PROVISIONS

The term of this MOU and a more detailed agreement shall be coterminous with the maturity of the debt issued for the Baseball Stadium construction project.

LBC shall agree to operate and manage ball club activities, concessions, marketing for baseball activities, sky box rental and merchandise sales.

The City shall incorporate Baseball Stadium events into its marketing program to complement the LBC marketing program. The Advisory Committee shall consider an effective marketing strategy using LBC and City resources.

The agreement shall outline stadium operations and services to be delivered by LBC, food and beverage service requirements, facility maintenance requirements, and responsibility regarding utility payments.

The City and LBC shall determine the most cost-effective methods regarding stadium operations and maintenance.

If revenues do not equal or exceed expenditures, the City reserves the right to pursue other revenue generating activities, such as, but not limited to a parking fee and/or an admissions tax.

LBC use of the stadium shall be defined in the agreement. LBC shall have exclusive rights to the Baseball Stadium during the baseball season and for tryouts, practice, tournaments, baseball camp, and when applicable, Carolina League playoffs and All-Star Game play.

The undersigned parties have executed this Binding Memorandum of Understanding to evidence and confirm their intent with respect to the operations of LBC, operations and maintenance of the Baseball Stadium, creating a capital reserve, and to fund a defined amount of debt service. By executing this Memorandum, each of the parties hereby agree to work together cooperatively and negotiate, on the basis of the terms set forth herein, the detailed agreement regarding the operations of the Baseball Stadium.

Witness the following signatures and seals:

W. Calvin Falwell, President
Lynchburg Baseball Corp.

L. Kimball Payne, III
City Manager

Approved as to Form:

Walter C. Erwin
City Attorney